

A statement about codes of ethics & conduct

by Simon Longstaff

As a first point, it might be useful to note that, in addition to any inherent virtue in behaving ethically, the successful operation of any market depends on there being a commitment to basic ethical principles (especially those to do with disclosure and truth about the products/services being sold or traded).

The market does not necessarily assume that the principle of *caveat emptor* should apply in every instance. Indeed, it has been shown that the costs to individuals and corporations (and hence to the whole system) of having to guard against unscrupulous behaviour can be quite significant. One need only look at the increase in fees paid to lawyers to see some evidence of this.

There is a further cost to the community, as a whole, as it is required to fund the apparatus for regulation and surveillance. Actually, the community ends up carrying all of the costs as they are passed on in the form of increased prices and taxes.

It is particularly important that Codes be presented in a way that acknowledges that their validity is derived from the endorsement of those who apply the principles. That is, a Code of Ethics or Conduct should not be a substitute for personal responsibility. Rather, the Code should be understood as an authentic expression of what people hold to be right and proper.

Some directors are tempted to believe that the introduction of a Code of Conduct will absolve them of the responsibility to manage the values of an organisation. Nothing could be further from the truth.

As is the case in the general community, 'Black Letter Law' solutions are rendered relatively ineffective if applied in a culture where those affected have little understanding of the underlying principles that inform the Code and/or where there is no disposition to ensure that the Code is applied consistently. This lack of effectiveness can result even where there is a regime of strict enforcement.

It is unfortunate, but true, that there is no 'quick fix' when it comes to building corporate resolve to act ethically. Rather, there is a need to develop a range of values and dispositions that provide a foundation for responsible behaviour. Where these values have been developed, then they need to be expressed in the logical relationship between *both* a Code of Ethics *and* a Code of Conduct.

Each code will fulfil a different function. A Code of Ethics expresses fundamental principles that provide guidance in cases where no specific rule is in place or where matters are genuinely unclear. On the other hand, a Code of Conduct ought to be consistent with the primary Code of Ethics. However, it will provide much more specific guidance. A Code of Ethics

is akin to examples of what has been termed 'Fuzzy Law'. A Code of Conduct is closer to traditional 'Black Letter Law'.

Although it is necessary to recognise and apply this distinction, it is not sufficient. There is little point in applying principles that people either oppose (at a fundamental level) or fail to understand. There are many organisations whose members can recite the canon of values, visions, rules and regulations - while at the same time behaving in ways that are diametrically opposed to the principles that are espoused.

This failure of integrity is not, as some think, a conscious act of hypocrisy. Rather, it is symptomatic of a culture in which people have failed to engage with the meaning of what they profess.